

Group I comprising claims 1-12 and 14-24 were indicated as drawn to an image transmitting apparatus and method classified in Class 709, subclass 249.

Group II comprising claims 13 and 26 were indicated as drawn to an image receiving apparatus and method classified in Class 709, subclass 249.

The Examiner asserted that the claims are distinct because they are subcombinations disclosed as useable together in a single combination and under such circumstances are distinct if they can be shown to be separately useable. The Examiner asserted that in the present case, the image transmitting apparatus and method has separate utility "as it is used to transmit image data either via a mail server or the IP address of the receiving apparatus". The Examiner thus concluded that based on the above and because the search required for Group I is not required for Group II, restriction for examination purposes is required.

As noted above, Applicant has, by the present paper, elected Group I comprising claims 1-12 and 14-25 for examination with traverse.

In particular, Applicant respectfully traverses the Examiner's holding of distinctness. Applicant respectfully submits that at least the Examiner's assertion regarding the diversity of search field is incorrect on its face. In this regard, Applicant notes that both Groups I and II are identified by the Examiner, as classified in Class 709, subclass 249. Accordingly, it is respectfully submitted that the evidence of record indicates that the search fields are at

least significantly overlapping if not substantially identical. Accordingly, it is respectfully submitted that based upon this reason alone, restriction is inappropriate.

Moreover, Applicant respectfully submits that in accordance with the provisions of MPEP § 803, restriction is further inappropriate. In particular, MPEP § 803 indicates that even in situations where restriction is otherwise proper, the Examiner must make a showing of a serious burden to justify a Restriction Requirement. In the present application, the Examiner has not even addressed the issue of serious burden. Moreover, Applicant respectfully submits that at least based upon the above-noted identical classification of the two Groups of inventions, there is no serious burden on the Examiner. For this additional reason, it is respectfully submitted that restriction requirement is inappropriate.

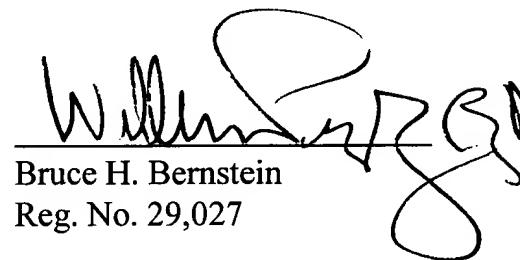
Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding restriction requirement together with an indication on the merits of all the pending claims.

#### SUMMARY AND CONCLUSION

Applicant has elected with traverse one of the Groups identified by the Examiner in the event that the Examiner holds Applicant's traverse to be non-persuasive. Applicant further respectfully requests an action on the merits of all the pending claims in due course. Such action is respectfully requested and is now believed to be appropriate and proper.

Should the Examiner have any questions or comments, the Examiner is respectfully requested to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
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November 18, 2002  
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